

**UNITED STATES DEPARTMENT OF JUSTICE**  
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**NONIMMIGRANT CLASSIFICATION FOR ALIEN TRAINEES**

## **H-3 CLASSIFICATION**

### **GENERAL**

Aliens seeking to enter the United States (US) for training in any field are generally classifiable as H-3 nonimmigrants (see exceptions and restrictions below). However, petitioning employers may not use H-3 classification for training programs primarily designed to provide productive employment via “on-the-job training,” i.e. where services performed by trainees will benefit their US companies and/or where authorized US workers would be employed but for the trainees’ services. There is no statutory limit on annual H-3 admissions to the US.

**Restriction:** H-3 status is not appropriate for graduate education, including medical training. Practicing physicians require J-1 or H-1B status. Medical students may qualify for H-3 under special circumstances in approved hospital training programs.

### **DURATION**

H-3 nonimmigrants will be admitted for the period of time necessary to complete the training specified in approved H-3 petitions, not to exceed two years.

### **REQUIREMENTS**

Petitioning employers or sponsors must demonstrate that:

- proposed training is not available in the alien’s beneficiary’s home country
- beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident alien workers are regularly employed
- beneficiary will not be productively employed except as incidental/necessary to training
- training will benefit beneficiary in pursuing a career outside the US

### **PROHIBITIONS**

A training program will **not** qualify if:

- it lacks fixed schedule, objectives, or means of evaluation
- it is incompatible with nature of petitioner’s business or enterprise
- the beneficiary already has substantial training/expertise in proposed field of training
- knowledge/skill to be acquired from training is unlikely to be used outside of US
- productive employment exceeds what is incidental and necessary to training
- it primarily recruits and trains aliens to staff of domestic operations in the US
- it lacks physical plant and sufficiently trained manpower to provide specified training
- it extends total allowable practical training period authorized for a nonimmigrant student

**Exception:** Structured, professional programs that offer practical training and hands-on experience in educating special needs children are not subject to all of the standard H-3 requirements and prohibitions. A maximum of 50 aliens per year may be admitted in H-3 status to attend special training programs lasting no longer than eighteen months.

## H-3 PROCEDURE

### Step One

Petitioning employer or sponsor files Form I-129 (including H supplement) with INS Service Center having jurisdiction over the training area. Multiple beneficiaries can be included if the nature, duration, and location of training are identical. Petitions must include:

- description of training and supervision to be given, specifying structure of the program
- proportion of time to involve productive employment
- number of hours to be spent each in classroom instruction and on-the-job training
- description of career abroad for which training will prepare the alien trainee(s)
- why training (a) is unobtainable in alien's country and (b) must be obtained in US
- source of any remuneration to be received by alien trainee(s)
- description of any benefit that will accrue to petitioner for providing specified training

### Step Two

Based on approval of H-3 petition (notified to petitioner on Form I-797C), an alien must apply on Form OF-156 at the nearest US consulate abroad for a visa to travel to the US (Canadians may present evidence of their approved status directly to INS inspectors at US ports of entry). In cases of multiple beneficiaries, INS will notify respective consulate of each H-3 trainee. For the purpose of obtaining a visa, an alien may be required to convince a consular officer of intent to enter the US for a **temporary period** of time and provide evidence of permanent ties to home country that support this intent. The same nonimmigrant intent may be examined by an INS officer at the port of entry to the US.

### DEPENDENTS

Spouses and children of H-3 principal trainees are entitled to H-4 status with the same restrictions as the principal. Employment is prohibited in H-4 status. H-4 dependents are permitted to pursue courses of study, but in this status are not eligible for practical training.

## CLASSIFICATION ALTERNATIVES FOR ALIEN TRAINEES

### B-1: Business visitors<sup>1</sup>

Individuals who would otherwise qualify for H-3 status may be eligible for B-1 status as long as the US-based company does not pay salary or expenses. In such cases, the foreign employer (foreign affiliates of US companies are acceptable) must continue to be the principal employer and pay wages or salary from a source abroad. Under these circumstances, for example, alien trainees who seek merely to observe the conduct of business or other professional or vocational activity ("shadowing") may qualify for B-1 classification.

**"On-the-job" training:** Hands-on training, designed to provide on-the-job experience, is **not** deemed to fall within the B-1 visa classification. Even if the foreign employer pays the salary and expenses of such an individual, B-1 status is inappropriate if the hands-on services performed by the trainee will benefit the US-based company and/or the US-based company would have had to hire a US work authorized employee but for the services of the foreign national trainee.

### H-1B: Specialty workers<sup>2</sup>

Where the nature of training is paid employment that enhances alien individuals' professional skills by providing practical experience, employers may consider petitioning for the services of these individuals as specialty workers. Employee trainees must be paid salary or wages in H-1b status.

**Note:** Training under the H-1B classification must require a bachelor's degree or equivalent credentials.

<sup>1</sup> See Employer Bulletin 99-03, featuring Permissible Activities under the B-1 Business Visitor Classification.

<sup>2</sup> See Employer Bulletin 99-07, featuring H-1b Specialty Workers and Alternatives.

## **CLASSIFICATION ALTERNATIVES FOR ALIEN TRAINEES, cont.**

### **J-1: Exchange visitors**

Organizations, institutions, or agencies incorporated in the US may apply for program designation to the United States Information Agency (USIA). Acceptable program activities include participation in structured training programs, conducted by approved program sponsors and designed to provide participants with broad exposure to American society, culture and institutions. The goals of USIA program training are to enhance exchange visitors' skills in their specialty or non-specialty occupations and to improve their knowledge of applicable American techniques, methodologies, or expertise.

**Training programs whose only purpose is to provide labor to US employers are not acceptable.**

Employers who do not have approved programs or meet sponsor criteria may be eligible to execute written agreements with approved sponsors that delineate the parties' respective duties and obligations and specifically recite the third parties' obligations to act in accordance with USIA regulations at 8 CFR 514.22.

### **F-1: Foreign students<sup>3</sup>**

Foreign students in valid F-1 status (full time students in good standing or graduates of approved US educational institutions) are eligible for **optional practical training** that is related to and at a level consistent with their approved courses of study. If approved by the INS and the foreign student advisor<sup>4</sup>, optional practical training may involve employment of a 20 hours/week or less while school is in session, during annual vacations, when school is not in session, and for up to a year following graduation. Total duration of this training may not exceed one year.

### **L-1: Intracompany transferees<sup>5</sup>**

This classification may be most appropriate for multinational companies that seek to provide intra-company career development to non-American personnel by familiarizing them with the operations, techniques, etc. of their US subsidiaries or affiliates. To qualify for L classification, an alien must have been continually employed by the foreign affiliate for at least one of the preceding three years in an executive, managerial, or specialized knowledge position.

## **COMMON CLASSIFICATION ALTERNATIVES FOR ALIEN TRAINERS**

### **B-1: Business visitors<sup>6</sup>**

Acceptable B-1 business activities include installation, service, and/or repair of commercial or industrial equipment purchased from a company outside the US and/or **training** of US workers to perform such services. In such cases, however, the contract of sale typically requires the seller to provide such training and the B-1 visitor must possess specialized knowledge essential to contract performance.

### **H-2b: Temporary Services for Temporary Positions<sup>7</sup>**

H-2B status may be approved for services as a trainer of up to three years' duration, provided that the services continue to constitute *bona fide training* of the US workforce in a given skill rather than actually performing that skill in the workplace. Such a training period must be followed by six months of foreign residence before the trainee can be approved for H or L nonimmigrant status.

<sup>3</sup> See Employer Bulletin 99-05, featuring employment alternatives for foreign students.

<sup>4</sup> Every institution issuing I-20 forms to foreign students is required to appoint a Designated School Official (DSO), who acts as advisor to these students.

<sup>5</sup> See Employer Bulletin 99-10, featuring intracompany transferees.

<sup>6</sup> See Employer Bulletin 99-03, featuring permissible B-1 visitor activities.

<sup>7</sup> See Employer Bulletin 99-08, featuring the H-2 classifications.